HON'BLE SRI JUSTICE P.S. NARAYANA

WRIT PETITION NO. 21785 OF 2006

DATE: 06.11.2007

Between:

Smt. K. Yadamma W/o Mr. K. Papaiah, Hindu, 54 years
And five others

...Petitioners

AND

1. Reserve Bank of India represented by its Deputy General Manger, Saifabad, Hyderabad and one another

.....Respondents

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WRIT PETITION NO. 21785 OF 2006

ORAL ORDER:

Notice before admission was ordered on 23.10.2006. On 10.11.2006 inasmuch as none appeared for the respondent and no counter affidavit has been filed, the interim order i.e., the status quo order granted on 23.10.2006 had been extended until further orders.

W.V.M.P.No. 1521 of 2007 is filed to vacate the interim order.

The Writ Petitioners filed the present Writ Petition for writ of Mandamus, declaring that the Demand Notice dated 10.7.2006 issued under Section 13(2) of the SARFAESI Act 2002 and the subsequent possession notices dated 7.10.2006 issued under Rule 8(1) and Sub-Rule 6 of Rule 8 of the Security Interest (Enforcement) Rules 2002, by respondent No. 2 to the petitioners as illegal, arbitrary and without jurisdiction and in consequence thereof to set aside the same, in the interest of justice.

It is stated that the petitioners have availed loan from the second respondent Bank on 27.11.2004 by mortgaging our residential property bearing H.No. 12-10-590/99/1/3, Warasiguda, Secunderabad-61, by creating Equitable Mortgage by deposit of title deed. It is further stated that the petitioner No. 6 stood as Guarantor in addition to another Guarantor viz., Mr. Samuel Jonah Immadi, who is not made a party to the Writ Petition on account of his unavailability. All the petitioners have executed the loan documents, as required by the Bank for availing the loan. They further submits that they have availed a loan of Rs. 23 lakhs on 27.11.2004 baring Account No. ML 240055 agreeing to repay the said amount in 60 monthly instalments of Rs. 50,500/- each together with

interest.

Further it is stated that the respondent No. 2 issued a legal notice dated 16.3.2006 informing that they have committed irregularities on repayment and therefore called upon us to pay a sum of Rs. 4,54,500/- in order to regularize the loan account, failing which Respondent No. 2 would proceed legally. After receipt of the notice, her husband, petitioner No. 2 herein approached and appraised the Bank of the difficulties faced by her and her family members. Immediately, on 29.3.2006 they had deposited a sum of Rs. 50,500/- and again on 17.5.2006 and 5.7.2006 a further amount of Rs. 50,500/- each.

It also further stated that while the matters stood thus, the second respondent Bank had issued demand notice dated 10.7.2006 to the petitioners under the provisions of the SARFAESI Act 2002 calling upon the petitioners to pay an amount of Rs. 22,65,234/- within 60 days from the date of receipt of the notice, failing, threatening with further steps under the above Act, It is further submitted that after receipt of the above notice on 28.7.2006 they approached the second respondent Bank seeking time for payment. The second respondent assured them that no action would be initiated if certain amount is paid immediately. In response to the same, petitioners deposited a sum of Rs. 1,01,000/- on 28.9.2006 and requested the second respondent to grant them further time. The second respondent Bank suddenly issued possession Notice dated 7.10.2006 and affixed a copy of the same to their residence including copy of notice under Sub-Rule (6) of Rule (8) of the security Interest (Enforcement) Rules 2002. The copy of possession Notice dated 7.10.2006 sent under RPAD by second respondent was received on 10.10.2006.

It is also stated that the action of the second respondent in issuing the above Possession Notice soon after collecting the amount of Rs. 1,01,000/- on 28.9.2006 is not only unjust but equally irregular and contrary to the SARFAESI ACT. As per the statement of Account issued by the second respondent for the period 1.8.2005 to 6.10.2006 the outstanding balance shown in their account was Rs. 21,80,238/- whereas the Demand Notice dated 10.7.2006 and possession Notice dated 7.10.2006 show an

outstanding balance of Rs. 22,65,234/- notwithstanding the payment made on 28.9.2006. When the petitioners requested the second respondent-Bank to give them the correct figures of the outstanding dues the second respondent Bank refused to give the same and threatened to take further action.

It is stated that the Writ Petition is filed questioning the action of the second respondent Bank as illegal and contrary to law as also stated that the second respondent at no point of time issued any notice or intimation to the petitioners declaring their account as having classified as an NPA, as required under Section 13(2) of the Act. It is further submitted that Section 13(2) of the Act provides that before notice under the said section and issued by the Secured Creditor for repayment of the secured debt or instalment thereof, the said secured debt must have been classified as non-performing asset and only upon such classification as NPA, the secured creditor gets power to issue notice to the borrower for repayment of such debt after giving him 60 days time. It is to be further seen that, Section 2(o) of the Act defines NPA as an Asset or account of a borrower which has been classified by the Bank or financial institution as sub-standard, doubtful or loss account as per the directions or guidelines relating to assets classification issued by an authority or body administering or relating such Bank or financial institution. In any other case, in accordance with the directions or guidelines relating to assets classification issued by RBI. It is further submitted that the second respondent Bank has not followed the above procedure while issuing the demand notice initially.

Further it is stated that as per RBI guidelines the facilities i.e., fund based facilities can be given or granted by a Bank or a Financial Institution in 3 ways viz.,

(i) By way of loan subject to repayment in stipulated periodical instalments or in one bullet payment. For this facility the charge would be the particular asset financed.

(ii) By way of Cash Credit (running account facility) in certain limits which is subject to review as per terms of sanction.

For this facility, charge would be the current assets i.e. stocks and receivables.

(iii) By way of Advance against Bills in the form of Bills purchased and discount for which charge would be bills or debts covered by the bill.

It is further averred that in situation under para 11(i) above, an account would be classified as an NPA if instalment and or interest remains unpaid for more than 90 days. Likewise, for a situation under para 11(ii) above, if the account becomes out of order for a period above 90 days the account could be classified as an NPA. Similarly, for a situation under Para 11(iii) above, if the bill remains unpaid for 90 days the NPA would come into operation from the 91st day onwards. It is further submitted that in the instant case a CC account becomes out or order in 3 ways viz., (a) when the account remains overdrawn (b) when they are no credits in the account and (c) there are credits but such credits are not sufficient to cover interest and other charges debited during the relevant quarter.

It is also further stated that the petitioners are not aware as to whether the second respondent Bank has followed the procedure as contemplated in Rule 8(2) of the Security Interest (Enforcement) Rules 2002, in which situation, the possession Notice given is vitiated and is therefore bad in the eye of the law.

Further it is stated that the further action of the second respondent in affixing notice under Sub-Rule 6 to Rule 8 of the above Rules 2002 without following the procedure under Section 14 of the SARFAESI Act 2002 is equally bad in the eye of law and makes the entire possession Notice as well as Demand Notice a mockery of justice vitiating the whole action of the second respondent. It is further submitted that the second respondent cannot take possession of the property, without following due procedure under law. In the instance case, as the second respondent having not followed the procedure as contemplated under Section 14 of the Act could not have issued notice under Sub-Rule 6 to Rule 8 of the above Rules 2002. Hence, the impugned action of the second respondent is wholly

without jurisdiction.

It is also stated that the second respondent has also not responded to the request of the petitioners as contained in their letters dated 4.10.2005 and 9.10.2005. It is further submitted that the petitioners have specifically represented to the second respondent that on account of road widening effecting their property, they had lost their saloon which is their family business and which was their main source of income. It is further stated that the property which was situated for the past 40 years at Warasiguda, Secunderbad, was effected by Road widening and even though the second respondent Bank is fully aware of the same, is proceeding with the above notices in an unfair and unjust manner without giving any consideration to the hardship faced by them. They stated that the second respondent Bank is bound under law to consider their request for grant of time for payment of the instalments and in any event to grant them time for regularizing the account. Certain further facts also been narrated by praying relief specified supra.

In the counter affidavit filed by the second respondent –Bank, it is stated that the petitioners availed a mortgage loan bearing ML A/c No. 240055 of Rs. 23 Lakhs from the second respondent on 27th November, 2004 by mortgaging the house property vide H.No. 12-10-590/99/1/3, Warasiguda, Secunderabad-61. It is further stated that the petitioners have created equitable mortgage of the property by way of depositing the title deeds with the second respondent Bank with the guaranty of two others. All the petitioners and the guarantors executed all the required documents with the Bank. The petitioners signed all the documents and agreed to repay the loan amounts in 60 monthly instalments of Rs. 50,500/- each together with interest.

It is also stated that the petitioners are always irregular in repaying the monthly instalments and consequently, the said loan account became non-performing asset. He also submits that even after so many reminders, the petitioners never returned to the Bank, to repay the due amounts. The second respondent Bank issued a legal notice on 16.3.2006 for outstanding

amounts due for an amount of Rs. 4,54,500/- in order to regularize the loan account, failing which they will proceed legally for the recovery of the amounts due. It is further submitted that the petitioners made repayments on the dates alleged by them but that is not sufficient for repayment as the particular loan account has become NPA long back.

In these circumstances, the second respondent Bank is constrained to exercise powers conferred under Section 13(2) of SRFAESI ACT and issued Demand Notice dated 10.7.2006, calling the petitioners to repay the total amounts due along with interests amounting to Rs. 22,65,234/- within the mandatory period of 60 days, failing which under the provisions of the Act, the second respondent Bank shall take possession of the secured property. The petitioners did not repay the total amounts due to the Bank even after the completion of the mandatory days. He further stated that the petitioners made a payment of Rs. 1,01,000/- on 28.9.2006 consequently, the second respondent Bank exercised the powers conferred under Sub-Rule (6) of the Rule (8) of the Security Interest (Enforcement) Rules-2002 and issued Possession Notice dated, 7.10.2006 along with the details as required to be given under the above said Rules. He also submits that a copy of the same notice was affixed on the property and also a copy sent through RPAD to the petitioners. This was received by the petitioners and the same is acknowledged by them in their affidavit. Further it is stated that the action of the second respondent Bank is in accordance with the provisions of the Statute and all the notices and actions of the second respondent Bank are within the powers conferred by the above said SARFAESI Act. It is further stated that the amounts mentioned in the Demand Notice are correct and are as per the records mentioned in the daily course of the Banking Business. He also submitted that declaring an account as an NPA is done according to the guidelines issued by the RBI and it is an internal mechanism of the bank and it is a mandatory thing to be intimated to the borrower. Certain other further facts also have been narrated.

In the light of the scheme of the Act and the provisions of the Act and also in the light of the respective stands taken by the parties several factual

aspects have been involved and despite these aspects, the petitioners are having a remedy of appeal, therefore, liberty is given to the petitioners to avail remedy and they are directed to approach the Debt Recovery Tribunal. The interim order granted will be operative for a period of three weeks.

With the above direction, the Writ Petition is disposed of. No order as to costs.

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P.S. NARAYANA, J

Date: 6.11.2007
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Note: Furnish copy in three days.